

§ 1.1202-0

26 CFR Ch. I (4-1-09 Edition)

Tax Under Section 1	
Taxable income exclusive of capital gains and losses	\$250,000
Net long-term capital gains (100% of \$140,000)	\$140,000
Net short-term capital loss (100% of \$50,000)	50,000
Net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976)	90,000
Total	340,000
Deduction of 50% of net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976) (section 1202)	45,000
Taxable income	295,000
Tax under section 1	177,480
Alternative Tax Under Section 1201(b)	
(1) Net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976)	\$90,000
(2) Subsection (d) gain:	
Section 1201(d)(1)	
Section 1201(d)(2)	
Section 1201(d)(3)	50,000
Total subsection (d) gain	50,000
(3) Net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976) in excess of subsection (d) gain (\$90,000 less \$50,000)	40,000
(4) Tax under section 1201(b)(1):	
(i) Taxable income	\$295,000
(ii) Less: 50% of item (1)	45,000
(iii) Amount subject to tax under section 1201(b)(1)	250,000
Partial tax (computed under section 1) ...	145,980
(5) Tax under section 1201(b)(2): (25% of item (1) or of item (2), whichever is lesser [25% of \$50,000])	\$12,500
(6) Tax under section 1201(b)(3) on item (3):	
Tax under section 1 on taxable income (\$295,000)	\$177,480
Less: Tax under section 1 on sum of item (4) (iii) (\$250,000) plus 50% of item (2) (\$25,000)	163,480
(Total \$275,000)	14,000
(7) Alternative tax under section 1201(b)	172,480

[T.D. 7337, 39 FR 44975, Dec. 30, 1974, as amended by T.D. 7728, 45 FR 72651, Nov. 3, 1980]

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This section lists the major captions that appear in the regulations under § 1.1202-2.

§ 1.1202-2 *Qualified small business stock; effect of redemptions.*

(a) Redemptions from taxpayer or related person.

- (1) In general.
- (2) De minimis amount.
- (b) Significant redemptions.
- (1) In general.
- (2) De minimis amount.

(c) Transfers by shareholders in connection with the performance of services not treated as purchases.

(d) Exceptions for termination of services, death, disability or mental incompetency, or divorce.

- (1) Termination of services.
- (2) Death.
- (3) Disability or mental incompetency.
- (4) Divorce.
- (e) Effective date.

[T.D. 8749, 62 FR 68166, Dec. 31, 1997]

§ 1.1202-1 Deduction for capital gains.

(a) In computing gross income, adjusted gross income, taxable income, capital gain net income (net capital gain for taxable years beginning before January 1, 1977) and net capital loss, 100 percent of any gain or loss (computed under section 1001, recognized under section 1002, and taken into account without regard to subchapter P (section 1201 and following), chapter 1 of the Code) upon the sale or exchange of a capital asset shall be taken into account regardless of the period for which the capital asset has been held. Nevertheless, the net short-term capital gain or loss and the net long-term capital gain or loss must be separately computed. In computing the adjusted gross income or the taxable income of a taxpayer other than a corporation, if for any taxable year the net long-term capital gain exceeds the net short-term capital loss, 50 percent of the amount of the excess is allowable as a deduction from gross income under section 1202.

(b) For the purpose of computing the deduction allowable under section 1202 in the case of an estate or trust, any long-term or short-term capital gains which, under sections 652 and 662, are includible in the gross income of its income beneficiaries as gains derived from the sale or exchange of capital assets must be excluded in determining whether, for the taxable year of the estate or trust, its net long-term capital gain exceeds its net short-term capital loss. To determine the extent to which such gains are includible in the gross income of a beneficiary, see the regulations under sections 652 and 662. For example, during 1954 a trust realized a gain of \$1,000 upon the sale of stock held for 10 months. Under the terms of the trust instrument all of such gain

must be distributed during the taxable year to A, the sole income beneficiary. Assuming that under section 652 or 662 A must include all of such gain in his gross income, the trust is not entitled to any deduction with respect to such gain under section 1202. Assuming A had no other capital gains or losses for 1954, he would be entitled to a deduction of \$500 under section 1202. For purposes of this section, an income beneficiary shall be any beneficiary to whom an amount is required to be distributed, or is paid or credited, which is includible in his gross income.

(c) The provisions of this section may be illustrated by the following example:

Example: A, an individual, had the following transactions in 1954:

Long-term capital gain	\$6,000	
Long-term capital loss	4,000	
Net long-term capital gain		\$2,000
Short-term capital loss	1,800	
Short-term capital gain	300	
Net short-term capital loss		1,500
Excess of net long-term capital gain over net short-term capital loss		500

Since the net long-term capital gain exceeds the net short-term capital loss by \$500, 50 percent of the excess, or \$250, is allowable as a deduction under section 1202.

[T.D. 6500, 25 FR 12001, Nov. 26, 1960, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980]

§ 1.1202-2 Qualified small business stock; effect of redemptions.

(a) *Redemptions from taxpayer or related person*—(1) *In general.* Stock acquired by a taxpayer is not qualified small business stock if, in one or more purchases during the 4-year period beginning on the date 2 years before the issuance of the stock, the issuing corporation purchases (directly or indirectly) more than a de minimis amount of its stock from the taxpayer or from a person related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

(2) *De minimis amount.* For purposes of this paragraph (a), stock acquired from the taxpayer or a related person exceeds a de minimis amount only if the aggregate amount paid for the stock exceeds \$10,000 and more than 2 percent of the stock held by the taxpayer and related persons is acquired. The fol-

lowing rules apply for purposes of determining whether the 2-percent limit is exceeded. The percentage of stock acquired in any single purchase is determined by dividing the stock's value (as of the time of purchase) by the value (as of the time of purchase) of all stock held (directly or indirectly) by the taxpayer and related persons immediately before the purchase. The percentage of stock acquired in multiple purchases is the sum of the percentages determined for each separate purchase.

(b) *Significant redemptions*—(1) *In general.* Stock is not qualified small business stock if, in one or more purchases during the 2-year period beginning on the date 1 year before the issuance of the stock, the issuing corporation purchases more than a de minimis amount of its stock and the purchased stock has an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of the issuing corporation's stock as of the beginning of such 2-year period.

(2) *De minimis amount.* For purposes of this paragraph (b), stock exceeds a de minimis amount only if the aggregate amount paid for the stock exceeds \$10,000 and more than 2 percent of all outstanding stock is purchased. The following rules apply for purposes of determining whether the 2-percent limit is exceeded. The percentage of the stock acquired in any single purchase is determined by dividing the stock's value (as of the time of purchase) by the value (as of the time of purchase) of all stock outstanding immediately before the purchase. The percentage of stock acquired in multiple purchases is the sum of the percentages determined for each separate purchase.

(c) *Transfers by shareholders in connection with the performance of services not treated as purchases.* A transfer of stock by a shareholder to an employee or independent contractor (or to a beneficiary of an employee or independent contractor) is not treated as a purchase of the stock by the issuing corporation for purposes of this section even if the stock is treated as having first been transferred to the corporation under § 1.83-6(d)(1) (relating to transfers by